THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition Nos. 16223, 19927 and 20375 of 1999

COMMON ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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Inasmuch as common questions of fact and law are involved and all these writ petitions emanate from a common order, dated 19-06-1997, passed by the Special Court under the A.P. Land Grabbing (Prohibition) Act (for brevity 'the Act'), Hyderabad, all these writ petitions can be disposed of together.

L.G.C.No.146 of 1994 was originally filed by the applicants against, one, P.Mohan and others. The applicants in L.G.C.No.2 of 1995, who are the purchasers from the second applicant in L.G.C.No.146 of 1994, filed that application against the said P.Mohan and others. Therefore, in both the applications under L.G.C.No.146 of 1994 and L.G.C.No.2 of 1995, the respondents are common, though the applicants are different. A common judgment was delivered, as stated hereinabove, by the learned Special Court. The applicants in L.G.C.No.146 of 1994 and L.G.C.No.2 of 1995 filed two separate W.P.Nos.16223 and 20375 of 1999 respectively. The respondents in both the L.G.Cs. filed W.P.No.19927 of 1999 assailing a finding given *inter alia* in the common judgment by the Special Court, which is against them.

The facts lie in a narrow compass. According to the applicants, the property in dispute was originally belonging to, one, Smt.Sulochana Bai. One, Kasala Yadagiri, S/o K.Narasimhulu purchased the said

property by means of two registered sale deeds, dated 28-01-1955 and 28-03-1955 for a valuable consideration. When there had been some interference in regard to possession over the said disputed land, he filed O.S.No.54/1 of 1955 on the file of the Court of Munsif Magistrate, West & South, Hyderabad, against six persons, who claimed to have right of pathway in plot Nos.25, 26 and 28 to Maisamma Temple, situate near Namala Gundu, which is adjacent to the disputed site. Eventually, the suit was decreed on 16-01-1956 in favour of the said Yadagiri. From the said Yadagiri, a part of the property was purchased by, one, N.Bagamma, by means of a registered sale deed, dated 30-11-1960, from whom, one, Khushi Ram Soni, purchased the property under a registered sale deed, dated 19-04-1963. Khushi Ram Soni in turn sold the property by means of a registered sale deed, dated 13-03-1967, in favour of the second applicant. The other part of the property was sold by Kasala Yadagiri in favour of, one, Naini Mallesham, under a registered sale deed, dated 14-11-1960. Mallesham in turn sold the said property by means of a registered sale deed, dated 26-06-1967 in favour of the first applicant. Thus, the applicants 1 and 2 became the owners and possessors of the property in dispute. It is their further case that earlier to these sale transactions, K.Yadagiri divided the property, purchased by him from Smt.Sulochana Bai, into eight plots after having prepared the necessary lay out and obtained the necessary permission from the Municipal Corporation of Hyderabad. The first respondent started interfering with the possession of the applicants. He filed a suit in O.S.No.18 of 1984 on the file of the XI Assistant Judge, City Civil Court, Secunderabad, and obtained *ex parte* injunction order against the applicants. He also started construction of compound wall. The applicants, therefore, filed O.S.No.2613 of 1984 on the file of the I Assistant Judge, City Civil Court, Secunderabad, and obtained status quo orders on 29-08-1984 in I.A.No.408 of 1984. Again both the applicants filed the suits in

O.S.No.1248 of 1986 and O.S.No.1247 of 1986 respectively on the file of the III Additional Judge, City Civil Court, Secunderabad, for declaration of their title and for recovery of possession of the disputed land. The two suits filed earlier by both the parties were transferred to the Court of the III Additional Judge, City Civil Court, Secunderabad, for joint trial and re-numbered as O.S.No.213 of 1990 and O.S.No.240 of 1990. All the four suits were later transferred to the Land Grabbing Court in view of sub-section (8) of Section 8 of the Act. Having regard to the fact that the applicants filed independent applications before the Land Grabbing Court, that Court on transfer, by operation of law, has directed the four suits filed earlier before it to be closed. According to the applicants, the respondents were grabbers.

As against the case of the applicants, the case of the first respondent was that the property in dispute, in fact, belonged to, one, Kasala Yadagiri, S/o Narasimhulu. Originally, Acs.30.00 of land covered by Sy.No.166 of Zamistanpur village was belonging to Osmania University. That land was divided into 39 plots. Of them, 28 plots were allotted to various persons in exchange of the plots of the land acquired by the University from them. The land in dispute does not lie in Sy.No.52/14 of Miyakunta village, but is covered by Sy.No.166 of Zamistanpur village. The sale deeds under which the applicants are said to have purchased the lands do not cover the lands in dispute. The boundaries as mentioned in those sale deeds are different from the boundaries existing on the land in dispute. The name of Smt.Sulochana Bai was not disclosed in any of the revenue records. Plot Nos.10 and 28, covered by Sy.No.166 of Zamistanpur village, were allotted to, one, Moulvi Mohd. Farooq Segedar of Peshi Mubarak. Plot No.28 was purchased by K.Yadagiri from the said Farooq and from Yadagiri the father of the first respondent purchased the land in an extent of 855 sq.

yds. forming part of plot No.28 in Sy.No.166 of Zamistanpur village, which is also known as Kancha Devuni Gadda under sale deed, dated 14-12-1955. It was his specific case that he had nothing to do with Sy.No.52/14 of Miyakunta village. Since his wife was physically handicapped, she was given license to distribute L.P.G. Cylinders. She, after having applied and obtained the necessary permission from the Municipal Corporation, Secunderabad, constructed a godown for storing the L.P.G. cylinders on the disputed lands. Thus, he was not the land grabber. Except the first respondent, in both the Land Grabbing Cases, all other respondents remained *ex parte*.

On the above pleadings, the Special Court framed as many as 8 issues and one additional issue as under.

> i. Whether the application schedule property is in Sy.No.52/14 of Miyakunta of Namala Gundu Secunderabad as contended by the petitioners or is located in Sy.No.166 of Jammistanpur village of Kancha Devuni Gadda as contended by the respondents?
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> ii. Whether the said plots 2 & 3 of plot No.28 forms part of Sy.No.52/14 of Miyakunta village as per the lay-out plan No.158/E of 1959-60 dt.25.8.1959 of the MCH Secunderabad Division?
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> iii. What is the effect of the alleged Gazette publication dt.12.11.92 as pleaded by R1 and R6 in their addl. Counter dt.15.10.96 showing acquisition of Sy.No.52/14 of Miyakunta by Govt. which was said to have been already notified and published in A.P. Gazette No.34 dt.20.8.92 Part II Miscellaneous Notification of interest to the public under sub Sec.(1) of Sec.10 of the Urban Land (Ceiling & Regulation) Act 1976?
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> iv. Whether the contesting respondents are the owners of the petition schedule land as claimed by them?
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> v. Whether the application schedule property claimed by the applicant and the land claimed by the respondents is one and the same?
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> vi. Whether the applicants have title to the application schedule

property?

vii. Whether the respondents are land grabbers within the meaning of Sec.2(d) and (e) of the A.P.L.G. (P) Act?

viii. To what relief?

Addl. Issue: Whether R7 & R8 are not necessary parties to this LGC?

At the time of enquiry, 11 witnesses were examined on behalf of the applicants and the documents Exs.A1 to A100 were got marked. On behalf of the first respondent, 4 witnesses were examined and Exs.B1 to B11 were got marked. On the side of the Court two witnesses were examined as C.Ws.1 and 2 and Exs.C.1 to C.3 were got marked.

Appreciating the evidence, both oral and documentary, adduced on either side, the Special Court having been of the view that the land in dispute was covered by Sy.No.166 of Zamistanpur village and the first respondent was not the owner thereof, eventually dismissed both the applications. It was also held by the Special Court that the respondents 1 to 6 also had no title to the application schedule land but they had been in possession and therefore, the Revenue Divisional Officer concerned should initiate action on behalf of the State against the encroachers.

Thus, having been aggrieved by the impugned judgment, the applicants in both the L.G.Cs. filed two writ petitions and the first respondent in the L.G.Cs. filed another writ petition, as stated hereinabove.

It may be mentioned at the outset that absolutely there is no dispute as regards the identity of the land in question. Both parties clearly understand that the land in dispute is one and the same. However, the dispute among them *inter se* is confined only to the survey number, which actually covers the land in dispute. While it is the specific

case of the applicants that the land in dispute is covered by Sy.No.52/14 of Miyakunta village, the case of the first respondent is that it is covered by Sy.No.166 of Zamistanpur village. Having thus had the differences about the actual survey number, which is covering with the land in dispute and the area in which the land in dispute is situate, both the parties sought to establish their respective contentions by filing the relevant documents.

As discussed hereinabove by us, both parties clearly understand that the property in dispute, which is the subject matter of the two Land Grabbing Cases, is the land in dispute amongst them. Each of them has set up independent title to the said property. The applicants traced their title originally from, one, Smt. Sulochanabai, who is said to have sold the property in favour of, one, Kasala Yadagiri, S/o Narasimhulu and the said Kasala Yadagiri after having divided the said land into various plots by forming an appropriate lay out and after having obtained the necessary permission from the Municipal Corporation of Hyderabad, sold the plots to various persons, eventually to the applicants 1 and 2. The first respondent, however, traces his title from, one, Kasala Yadagiri, from whom he is said to have purchased the said property by means of an unregistered sale deed, dated 14-12-1955. Of course, he has also taken the plea *inter alia* in his counter that originally the property belongs to Osmania University, which acquired the land and allotted some plots in exchange to various persons whose lands were acquired by it and, one, Mohd. Farooq was one of its allottees in respect of plot No.28.

From the record it is obvious that the applicants claimed to have purchased the properties from the various purchasers, in turn who purchased the property from, one, Kasala Yadagiri, S/o Narasimhulu, and even respondents also claimed to have purchased the properties from

the said Kasala Yadagiri, S/o Narasimhulu. The record is conspicuously silent as to whether the vendor of the respondents and the vendor of the petitioners, namely, Kasala Yadagiri, S/o Narasimhulu, is one and the same. The registered sale deeds filed on the side of the applicants clearly show the survey number as 52/14, which is the survey number of the land in dispute as given in the schedule appended to the application. *Prima facie* thus it shows that these documents pertained to the land in question. However, it is the specific plea of the respondents that the land in question is not covered by survey No.52/14, situate at Miyakunta Village, but in fact it is covered by survey No.166, situate at Zamistanpur village. Having taken a plea about the correctness of the survey number and the locality whereat the land in dispute is situate, the respondents have not filed even a single scrap of paper to trace the title of their vendor, namely, Kasala Yadagiri. Although they have taken up the plea *inter alia* in the counter that the property originally belonged to the Osmania university, the link document, so as to show that Kasala Yadagiri acquired the title validly having purchased the property from university, has not been filed in this case. As against this, the applicants traced their title by filing all the relevant documents up to the period of Sulochana Bai from whom Kasala Yadagiri is said to have purchased the property in the year 1955 by means of two registered sale deeds. Thus, the applicants discharged their burden that was thrust initially upon them, as per Section 10 of the Act. The burden now shifts to the respondents to show that they are not the land grabbers as alleged.

Having regard to the rival contentions about the correct survey number and the locality whereat the land in dispute is situate, so as to resolve the conflict, a Commissioner was appointed in this case. C.W.2 is the Commissioner appointed in this regard. He was by then the Deputy Director of Surveys in the department of survey. Pursuant to the order given to him, he visited the disputed land, localized the same and

submitted his report along with a sketch. The report in this case was marked as Ex.X11. The Special Court discussed in its judgment *inter alia* about Ex.X11 by extracting para 16 from the said report. Having thus extracted and excerpted a relevant para from the report of the Commissioner, the Court was of the view that the report might abundantly clear that T.S.Nos.1 to 35 of ward 141, block H, were correlated to Sy.No.166 of Zamistanpur village and T.S.Nos.36 to 45 correlated to old Sy.No.57 and the application schedule land predominantly situate in T.S.Nos.28 and 29 correlated to old Sy.No.166. The extract of the town survey land register, enclosed to Ex.C1, shows that R.S.No.52/14 of Miyakunta Village, which was correlated to town Sy.Nos.11 to 40, Block D, ward No.140 of Miyakunta, does not lie in any of the town survey numbers correlated to Revenue Survey No.52/14 of Miyakunta. This, according to the learned counsel appearing for the writ petitioners, is an apparent error on the face of the record.

In view of the said contention, it is appropriate to consider Exs.X11 and X12. A perusal of the document, particularly para 16 thereof, shows the position otherwise. Obviously the Special Court has fallen into an error in having not considered the consequences of last four lines of para 16, wherein it has been clearly stated thus:

> " Evidently, there is an error in the correlation made between the T.S. numbers and old survey numbers at this place which requires to be thoroughly verified and rectified".

Obviously, the learned Commissioner was discussing about the old town survey record, wherein the property in dispute was located within block H of ward 141, which consists of 47 town survey numbers. Of them, T.S.Nos.36 to 45 have been correlated to old survey number 57 and thus the petition schedule property, located predominantly in T.S.Nos.28 and 29, has been correlated to old Sy.No.166. The Commissioner did not stop there, he went on discussing about the error

in the following manner:

"Inasmuch as T.S.Nos.36 to 45 are situate at south of T.S.No.1 to 35, but as on date there was no old Sy.No.57 as could be seen from the village maps of either Zamistanpur or Miyakunta and in that view of the matter evidently there was an error that had crept in."

This para No.16 of the report of the Commissioner has obviously been not properly understood by the Special Court. Not only that it has been misconstrued so as to say that the Commissioner was of the view that the land in dispute clearly correlates to old Sy.No.166 of the Zamistanpur village.

It is always expedient to consider the report of the Commissioner as a whole. One is prone to commit an error, if one makes an attempt to read an isolated excerpt. In para 15 of the report, the Commissioner has clearly stated thus:

"It can be inferred from the composite plan that the petition schedule property falls predominantly within the limits of Sy.No.52/14 of Miyakunta village, which was part of Zamistanpur village as per the 1337 Fasli village map. Encroachment of 65 sq. mts. referred to in para 11 falls almost on the inter-village boundary, where at present a 40 feet wide road is situated."

It is obvious from a perusal of the said extracted portion that the Commissioner was of the clear view that the land in dispute falls predominantly within the limits of Sy.No.52/14 of Miyakunta Village. Having said so, the learned Deputy Commissioner, the Commissioner herein, has sought to explain in para 16 about the mistake that has been crept in, in the old town survey record. The mistake has been obviously shown in his report *inter alia* in para 16 that it referred to old Sy.No.57 on the southern side, but no such survey number was in existence as could be seen from the village maps of either Zamistanpur or Miyakunta. The report has been further elucidated by preparing a combined sketch in Ex.X13. A perusal of this document leaves no room for any doubt. It may be reiterated herein that in the report Ex.X11, the Commissioner was

referring to the two villages, namely, Miyakunta and Zamistanpur. Miyakunta was part of Zamistanpur village as per 1337 Fasli. Both are adjacent to each other is obvious. In the combined sketch prepared in Ex.X13 on the northern end, that is on the top of the map, he has marked the portion with black line showing it in the index as “Zamistanpur boundary discrepancy”. The original boundary as shown in the records was shown by him and the discrepant boundary has also been shown by drawing a thick black line by the side of it. If the original line were to be considered, Sy.No.52/14 falls in Zamistanpur village by the side of Sy.No.166. If the report of the Commissioner were to be considered that is the thick black line drawn by him were to be considered, Sy.No.52/14 falls in Miyakunta village. This can be clearly seen from Ex.X13 plan. What is noteworthy here is Sy.No.166 is distinct from Sy.No.52/14. According to the report Sy.No.52/14 falls just by the side of the boundary line in between Zamistanpur village and Miyakunta. Assuming for a moment that the property in question is situate in Zamistanpur village, as can be seen from the original village plan, obviously, the existence of the land covered by Sy.No.52/14 and the land covered by Sy.No.166 is patent on the face of it. When that be the clear fact that is emanating from Ex.X13, there is no point in saying that the land in dispute is covered by Sy.No.166 in Zamistanpur village and it is not correct to say that it is covered by Sy.No.52/14 in Miyakunta village. As per the old records, both Sy.Nos.166 and 52/14 are shown within the boundary of Zamistantpur village. It may be reiterated here that in all the title deeds filed on the side of the applicants from the year 1955 onwards it has been consistently shown that the land, the subject matter of those sale deeds, is covered by Sy.No.52/14 of Miyakunta village. Whether it is in Miyakunta village or Zamistanpur village, one inescapable conclusion seems to be that they fall side by side and are adjacent, but there can be no mistake in regard to the actual survey number covering the land in

dispute. Particularly when both Sy.Nos.166 and 52/14 are shown as per the original plan within the boundary of Zamistanpur village, the existence of Sy.No.52/14, for the above reasons, cannot be denied.

Now, in view of Ex.X13 coupled with Ex.X11 report the fact is further elucidated by showing that Sy.No.52/14 falls just by the side of the boundary line separating Zamistanpur village from Miyakunta. After having considered the report of the Deputy Commissioner in Ex.X11 along with Ex.X13 plan, and giving our anxious considerations thereto, we are of the considered opinion that the report clearly shows that the land in dispute is covered by Sy.No.52/14 of Miyakunta village. The Special Court has clearly committed an error in having construed Ex.X11 report of the Deputy Commissioner in converse. Thus, the Court has committed a jurisdictional error in appreciating a relevant evidence contrary to the actual state of affairs as could be seen from Ex.X11 and Ex.X13.

Apart from this apparent mistake that has been crept in in the impugned judgment, as discussed by us hereinabove, the applicants filed all their title deeds tracing them up to the original owner, who sold the property in favour of Kasala Yadagiri, S/o Narasimhulu in the year 1955. But, the respondents failed to trace the title of their alleged vendor, the aforesaid Kasala Yadagiri. They are not sure as to whether the said Kasala Yadagiri purchased the property from Osmania University or whether he purchased the property from the original owner, Moulvi Mohd. Farooq Segedar, as stated *inter alia* in the counter. When they were not sure of the original owner, it is obvious that they are not able to trace the title of the said Kasala Yadagiri. The confusion continues to remain in the counter, when it is not said that Kasala Yadagiri, the so called vendor of the respondents, is the same person referred to in the application. The name and father's name of the said Yadagiri, obviously tallied, but there has been no whisper whether their vendor is the same person who is the

vendor of the applicants or a different person. If he is the same person, he cannot part with title validly in favour of the respondents, having clearly sold the property in favour of various purchasers, after having divided the property into various plots, having prepared the lay out and obtained the necessary permission from the municipality council. Presumably, the respondents remained silent on this point, so as to keep the confusion forever. It is clearly a case where the respondents failed to discharge their burden that they are the owners of the land in dispute and they have valid title and that they are not the grabbers of the property.

For the above reasons, we are of the considered view that the learned Special Court committed an error in having concluded that the property in question, situate in Zamistanpur village in Sy.No.166 and that the respondents are the owners thereof, which is obviously contrary to the record and evidence placed on either side; more particularly, the report of the Deputy Commissioner in Ex.X11 which has been relied upon on either side.

For the above reasons, W.P. Nos.16223 and 20375 of 1999 are allowed and W.P.No.19927 of 1999 is dismissed. The impugned judgment of the learned Special Court is hereby set aside. Consequently, L.G.C.No.146 of 1994 and L.G.C.No.2 of 1995 stand allowed. Under the circumstances, there shall be no separate order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

09th August, 2006.

cvrk/skmr